

Exhibit 2



In re Nutraquest, Inc., Debtor.

Civ. No. 03-5869 (GEB)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

2004 U.S. Dist. LEXIS 29143

March 5, 2004, Decided

March 8, 2004, Filed

NOTICE: [*1] NOT FOR PUBLICATION

SUBSEQUENT HISTORY: Application denied by, Motion granted by *In re Nutraquest, Inc.*, 2004 U.S. Dist. LEXIS 29146 (D.N.J., Mar. 15, 2004)

PRIOR HISTORY: United States Bankruptcy Court. Chapter 11 Case No. 03-44147 (RTL).

COUNSEL: For OFFICIAL UNSECURED CREDITORS' COMMITTEE OF NUTRAQUEST, INC., Movant: SIMON EDWARD FRASER, STEPHEN A. GROSSMAN, MONTGOMERY, MCCracken, WALKER, & RHOADS, LLP, CHERRY HILL, NJ.

For PLAINTIFFS STEERING COMMITTEE, Movant: NANCY A. WASHINGTON, SAIBER, SCHLESINGER, SATZ, & GOLDSTEIN, LLC, NEWARK, NJ.

For JENNIFER DUNKLE, Movant: NANCY A. WASHINGTON, COLIN R. ROBINSON, SAIBER SCHLESINGER SATZ & GOLDSTEIN, LLC, NEWARK, NJ.

For MARINA CORODEMUS, Mediator: MARINA CORODEMUS, CORODEMUS & CORODEMUS, PERTH AMBOY, NJ.

For CARLOS MANUEL CALVO, (CIVIL 04-687),

RAYMOND RUSZKOWSKI, (civil 04-939), Plaintiffs: JOHN H. RUIZ, ROBERTO VILLASANTE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MIAMI, FL.

For JOANNE R. PEEPLES, (CIVIL 04-933), Plaintiff: DAVID H. GOLD, COUNSEL NOT ADMITTED TO USDC-NJ BAR, GOLDFARB, GOLD, GONZALEZ & WALD, ESQS., BOCA RATON, FL; NANCY A. WASHINGTON, SAIBER, SCHLESINGER, SATZ, & GOLDSTEIN, LLC, NEWARK, NJ.

For RICHARD H. PEEPLES, III, (CIVIL 04-933), Plaintiff: DAVID H. GOLD, COUNSEL NOT ADMITTED TO USDC-NJ BAR, GOLDFARB, GOLD, GONZALEZ & WALD, ESQS., BOCA RATON, [*2] FL.

For RICHARD H. PEEPLES, IV, (CIVIL 04-933), BRETT PEEPLES, (CIVIL 04-933), Plaintiffs: DAVID H. GOLD, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BOCA RATON, FL.

For EARLINE COOK, surviving spouse & administrator of the Estate of Henry L. Cook (CIVIL 04-690), Plaintiff: DAVID F. MICELI, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, PC, MONTGOMERY, AL; KENNETH E. SIEMENS, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MURPHY, TAYLOR, SIEMENS & ELLIOTT, ESQS., ST. JOSEPH, MO. NANCY A. WASHINGTON, SAIBER,

SCHLESINGER, SATZ, & GOLDSTEIN, LLC, NEWARK, NJ.

For DERROW W. CARTER, (CIVIL 04-689), Plaintiff: EDWARD BLIZZARD, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BLIZZARD, MCCARTHY & NABERS, ESQS., HOUSTON, TX; ROBERT A. SCHWARTZ, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BAILEY, GALYEN & GOLD, ESQS., HOUSTON, TX; RUSSELL S. BRIGGS, COUNSEL NOT ADMITTED TO USDC-NJ BAR, FIBICH, HAMPTON, LEEBRON & GARTH, LLP, HOUSTON, TX.

For JACQUELEN CRANE, (CIVIL 04-691), COY VAN PARCHMAN, (CIVIL 04-827), ELOY SANCHEZ, (CIVIL 04-699), MELISSA L. RICHARDS, (CIVIL 04-825), GARY MINOR, (CIVIL 04-1082), BESSY MARTINEZ, (CIVIL 04-697), RICHARD L. GARZA, (CIVIL 04-694), GREGORY [*3] DELAGARDE, (CIVIL 04-693), MARIA G. ALVAREZ, (CIVIL 04-682), JOSE AGUILAR, (CIVIL 04-681), Plaintiffs: RUSSELL S. BRIGGS, COUNSEL NOT ADMITTED TO USDC-NJ BAR, FIBICH, HAMPTON, LEEBRON & GARTH, LLP, HOUSTON, TX.

For KILEY BECHLER, as personal representative of and the Executrix of Steven Scott Bechler (CIVIL 04-1130), Plaintiff: DAVID J. MEISELMAN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MEISELMAN, DENLEA, PACKMAN, CARTON & EBERZ, PC, WHITE PLAINS, NY; RICHARD BRYAN JACKSON, COUNSEL NOT ADMITTED TO USDC-NJ BAR, STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, ESQS., MIAMI, FL; GERALD H. GLINE, COLE SCHOTZ MEISEL FORMAN & LEONARD, HACKENSACK, NJ.

For KEVIN LEUENHAGEN, individually & on behalf of Ryan Pederson & Tyler Leuenhagan (Civil 04-695 & Civil 04-3137), CAROL A. LEUENHAGEN, (Civil 04-695 & Civil 04-3137) also known as, CAREL LEUENHAGEN, Plaintiffs: KEITH D. JACOBSON, COUNSEL NOT ADMITTED TO USDC-NJ BAR, KENNETH B. MOLL & ASSOCIATES, LTD., CHICAGO, IL; NANCY A. WASHINGTON, SAIBER, SCHLESINGER, SATZ, & GOLDSTEIN, LLC, NEWARK, NJ; THOMAS F. OCHS, COUNSEL NOT ADMITTED TO USDC-NJ BAR, GRAY, STEFANI & MITVALSKY, PLC, CEDAR RAPIDS, IA.

For PATRICIA L. MOUNTCASTLE, (CIVIL [*4] 04-936), Plaintiff: MARGARET N. WALKER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, SAUNDERS & WALKER, PA, PINELLAS PARK, FL.

For CAROL HALPERIN, (CIVIL 04-1080), ARTHUR HALPERIN, (CIVIL 04-1080), Plaintiffs: ERVIN A. GONZALEZ, COUNSEL NOT ADMITTED TO USDC-NJ BAR, COLSON, HICKS & EIDSON, ESQS., CORAL GABLES, FL; JOHN W. KOZYAK, COUNSEL NOT ADMITTED TO USDC-NJ BAR, KOZYAK, TROPIN & THROCKMORTON, PA, MIAMI, FL.

For JOHN DAVID MILLER, (CIVIL 04-698), ROSALEE CAIN, (CIVIL 04-686), JOHN ROBERT CAIN, (CIVIL 04-686), Plaintiffs: JAY HENDERSON, COUNSEL NOT ADMITTED TO USDC-NJ BAR, CRUSE, SCOTT, HENDERSON & ALLEN, LLP, HOUSTON, TX.

For CHRISTINE DELAHUNT, (CIVIL 04-692), Plaintiff: BARBARA QUINN SMITH, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MURRAY & MURRAY CO., LPA, SANDUSKY, OH; JAMES P. FRANTZ, COUNSEL NOT ADMITTED TO USBC-NJ BAR, FRANTZ, TOWNSEND & FOLDENAUER, ESQS., SAN DIEGO, CA; JOSEPH F. MURRAY, COUNSEL NOT ADMITTED TO USBC-NJ BAR, MURRAY, MURPHY, MOUL & BASIL, ESQS., COLUMBUS, OH.

For LINDA WILL, (CIVIL 04-1275), GEORGE WHEELER, JR., (CIVIL 04-1275) - as Independent Co-Administrators of the Estate of RASHIDI WHEELER, Deceased, ALTON CROMARTIE, (Civil 04-3261), Plaintiffs: [*5] THOMAS C. MARSZEWSKI, COUNSEL NOT ADMITTED TO USDC-NJ BAR, COCHRAN, CHERRY, GIVENS, SMITH & MONTGOMERY, LLC, CHICAGO, IL.

For RAFAEL MANRIQUE, Individually and as Representative of the Estate of Rafael Manrique de Lara, Jr., Deceased (CIVIL 04-1285), DORA ESTELA MANRIQUE, Individually and as Representative of the Estate of Rafael Manrique de Lara, Jr., Deceased (CIVIL 04-1285), Plaintiffs: RAMON GARCIA, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, EDINBURG, TX.

For KELLY S. COBERLY, (CIVIL 04-1079), Plaintiff:

KEVIN S. KAUFMAN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, KAUFMAN & BOWEN, ESQS., BRIDGEPORT, WV; TAMERA L. VENZKE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, THE VENZKE LAW FIRM, LLP, HOUSTON, TX.

For LINDA ROSS, (CIVIL 04-826), STEVEN ROSS, (CIVIL 04-826), Plaintiffs: GLENN T. MACALUSO, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MACALUSO & ASSOCIATES, SAN DIEGO, CA.

For DANIEL ADDO, (CIVIL 04-680), Plaintiff: JOSEPH A. D'AVANZO, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, WILSON, ELSER, MOSKOWITZ, EDLEMAN & DCKER, LLP, WHITE PLAINS, NY; PAUL D. RHEINGOLD, COUNSEL NOT ADMITTED TO USDC-NJ BAR, RHEINGOLD, VALET, RHEINGOLD, SHKOLNIK & MCCARTNEY, LLP, NEW YORK, NY.

For JUAN MARQUEZ, [*6] (CIVIL 04-696), Plaintiff: FRANCISCO X. DOMINGUEZ, COUNSEL NOT ADMITTED TO USDC-NJ BAR, EL PASO, TX.

For QUEEN KELLYBREW, (CIVIL 04-1603 & 04-3138), Plaintiff: MARK ANTHONY LAMBERT, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MEMPHIS, TN; NANCY A. WASHINGTON, SAIBER, SCHLESINGER, SATZ, & GOLDSTEIN, LLC, NEWARK, NJ; KEITH D. JACOBSON, COUNSEL NOT ADMITTED TO USDC-NJ BAR, CHICAGO, IL.

For ROBERT BERNACCHIA, (CIVIL 04-685), ANNA AMANDA BERNACCHIA, (CIVIL 04-685), Plaintiffs: JOSEPH A. D'AVANZO, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, WILSON, ELSER, MOSKOWITZ, EDLEMAN & DCKER, LLP, WHITE PLAINS, NY; THOMAS J. MOVERMAN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, LIPSIG, SHAPEY, MANUS & MOVERMAN, PC, NEW YORK, NY.

For VIRGINIA PIERCE, (CIVIL 04-1747), Plaintiff: GORDON J. MCKERNAN, PHILIP BOHRER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BATON ROUGE, LA.

For CATHLEEN OLMSTEAD, (CIVIL 04-824), Plaintiff: EDWARD J. SCHROEDER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, SAN DIEGO, CA.

For LAWRENCE HIGBEE, Individually and as personal representative of the Estate of Donna R. Higbee, Deceased (CIVIL 04-934), Plaintiff: SCOTT LEVENSTEN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, PHILADELPHIA, PA.

For [*7] DEBRA HOLCOMB, (Civil 04-3262), Plaintiff: CINDY STINE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, GOLDBERG, PERSKY & WHITE, PC, PITTSBURGH, PA; NANCY ISAACSON, GOLDSTEIN LEM & ISAACSON, PC, SPRINGFIELD, NJ.

For LISA BORGESE, (CIVIL 04-818), WILLIE BALLARD, (Civil 04-4604), AMY DONNELLY, (Civil 04-4605), RICKEY GREEN, (Civil 04-4606), KEN RUTHERFORD, Individually and as Administrator of the Estate of Wanda Rutherford, Deceased (Civil 04-4607), MICHAEL STERN, (Civil 04-4608), WILLIE ANN WILLIAMS, (Civil 04-4609), Plaintiffs: CHRISTOPHER A. SEEGER, SEEGER WEISS, LLP, NEWARK, NJ.

For BETTY S. PARKER, (CIVIL 04-937), Plaintiff: JOHN A. PIAZZA, COUNSEL NOT ADMITTED TO USDC-NJ BAR, RAMSEY LAW FIRM, PC, MOBILE, AL.

For CLARISSA WELLS, (CIVIL 04-2849), ROBERT EBRON, (CIVIL 04-2850), Plaintiffs: HUNTER J. SHKOLNIK, RHEINGOLD, VALET, RHEINGOLD, SHKOLNIK & MCCARTNEY, LLP, NEW YORK, NY.

For RICHARD MARKOWITZ, (CIVIL 04-384), RENEE PIERETTI, (CIVIL 04-384), TONY FERNANDEZ, (CIVIL 04-384), Plaintiffs: WILLIAM J. PINILIS, PINILIS HALPERN, LLP, MORRISTOWN, NJ.

For MARIA FIGUEROA, (CIVIL 04-1940 & CIVIL 04-2343), Plaintiff: DAVID A. MAZIE, NAGEL RICE DREIFUSS & MAZIE, LLP, LIVINGSTON, [*8] NJ; WILLIAM R. LANE, PARSONS, POWELL & LANE, L.L.C., OLD BRIDGE, NJ.

For FARRUKH KAHN, (CIVIL 04-935), Plaintiff: GARY A. WERNER, HACKENSACK, NJ.

For JOANNE LONG, (CIVIL 04-3021), KENNETH LONG, (CIVIL 04-3021), Plaintiffs: DEBORA A. O'NEILL, LAW OFFICES OF JACK MEYERSON,

PHILADELPHIA, PA.

For DARIN COHEN, (Civil 04-969), Plaintiff: GERALD H. GLINE, COLE SCHOTZ MEISEL FORMAN & LEONARD, HACKENSACK, NJ.

REGINA EVANS, (Civil 04-3059 & Civil 04-5943), Plaintiff, Pro se.

For REGINA EVANS, (Civil 04-3059 & Civil 04-5943), Plaintiff: WILLIAM C. BENSLEY, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOWARD, BRENNER & NASS, PC, PHILADELPHIA, PA.

For WINSTON LINDSLEY, (Civil 04-2018), GLORIA WYNDER, (Civil 04-4461), WILLIAM YATES, III, (Civil 04-5580), THOMAS R. ANAPOL, ANAPOL, SCHWARTZ, WEISS, COHAN, FELDMAN & SMALLEY, PC, CHERRY HILL, NJ.

For REBECCA REEVES, (Civil 04-3102), Plaintiff: NANCY A. WASHINGTON, SAIBER, SCHLESINGER, SATZ, & GOLDSTEIN, LLC, NEWARK, NJ; WHITNEY R. CHELNIK, SALBER SCHLESINGER SATZ & GOLDSTEIN, NEWARK, NJ.

For DAVID ADAMS, (Civil 04-3103), KENDRICK TAYLOR, (Civil 04-3104), ANNA RODRIGUEZ, (Civil 04-3105), JAMIE SLOOP, (Civil 04-3106), GENNARO [*9] GAMBARDELLA, SR, (Civil 04-3107), CARRIE CATLETT, (Civil 04-3108), JESSIE BROWN, (Civil 04-3109), EDWARD J. MATHEWS, (Civil 04-3110), CHRISTIE MATHEWS, individually and on behalf of Eric J. Mathews, a minor (Civil 04-3110), STAN HOSKINS, (Civil 04-3111), TERRI LETT, (Civil 04-3112), CINDY BELL, (Civil 04-3113), DAWN DINGESS, individually and as representative of the estate of Jeffrey Dingess, deceased (Civil 04-3114), ZACK BIGGS, individually, as representative of the estate of Terry Wayne Biggs, deceased (Civil 04-3115), CHARLES WHITEHURST, (Civil 04-3116), SANDRA WHITEHURST, (Civil 04-3116), HARRISON SMITH, (Civil 04-3117), MARY BEATTY, (Civil 04-3134), DIANE HUGHES, (Civil 04-3128), CAROL L. WESCOTT, (Civil 04-3129), JOHN M. WESCOTT, individually and on behalf of Douglas M. Wescott, a minor (Civil 04-3129), PAMELA SHRABLE, (Civil 04-3130), SUSAN DURANT, (Civil 04-3131), ANDREW BROWN, (Civil 04-3132), MISTY MCCORMACK, individually & on behalf of Breanna Ness & Brittany McCormack, minors (Civil 04-3133),

KIMBERLY COOPER, (Civil 04-3135), JAMES S. COOPER, individually & on behalf of Jelisha Cooper, Rashien Cooper & Radient Cooper, minors (Civil 04-3135), STEVE M. OLSCHWANGER, (Civil [*10] 04-3136), WALTER A. BRIDGES, (Civil 04-3148), SUSAN C. BRIDGES, individually and on behalf of Justin T. Bridges, a minor (Civil 04-3148), LAURA DAVIS, (Civil 04-3150), CHERYL DUNLAP, (Civil 04-3122), MARCI MAYOTTE, (Civil 04-3123), ROSE KRAMER, individually, as representative of the Estate of Rolf Michael Kramer, deceased, and on behalf of Favannah R. & Cameron M. Kramer (Civil 04-3124), MONICA RUSH, (Civil 04-3125), ALBERT BALE, (Civil 04-3126), AMANDA YOUNGS, (Civil 04-3127), DONNA MOORE, (Civil 04-3139), STEPHANIE GONZALES, (Civil 04-3227), BRYON APPEGATE, (Civil 04-4610), EILEEN ANTONIOLO, (Civil 04-4611), DIANE M. SPATES, (Civil 04-4612), ROBERT STOUGHTON, (Civil 04-4613), CARRIE BARO, (Civil 04-4614), ELENA MARTIN, (Civil 04-4615), THOMAS LAVERNE, (Civil 04-4617), WILLIAM WOOD, (Civil 04-4618), CAROL POYER, (Civil 04-4619), LINDA COLE, (Civil 04-4647), NORMAN MILLER, (Civil 04-4648), DOREEN ZIMAK, (Civil 04-4646), DONALD ZIMAK, (Civil 04-4646), KEITH A. NIEMAND, (Civil 04-4649), DIANE M. PITTS, (Civil 04-4650), TERESA M. KELLEY, (Civil 04-4651), MICHAEL LLOYD, (Civil 04-4652), STEPHANIE LOVE, (Civil 04-4653), THOMAS LOFTON, (Civil 04-4654), DANIEL BASSIGNANA, (Civil 04-4655), [*11] MARIA ROSA BASSIGNANA, Individually and as representaives of KRISTOPHER BASSIGNANA, a minor (Civil 04-4655), JENNY ALVAREZ, (Civil 04-4656), GLORIA ELKINS, (Civil 04-4657), DAWN DENTZAU, (Civil 04-4658), THERESA SHARP, (Civil 04-4659), MARY ANN NACLERIO, (Civil 04-4660), JAMES SANTRY, (Civil 04-4661), MICHELLE HOLLAND, (Civil 04-4662), MARLENE L. THOLEN, (Civil 04-4663), KATHLEEN DEVINSKY, (Civil 04-4664), RICHARD S. BUTKOWSKI, (Civil 04-4665), SAMANTHA GRANT, (Civil 04-4666), Plaintiffs: NANCY A. WASHINGTON, SAIBER, SCHLESINGER, SATZ, & GOLDSTEIN, LLC, NEWARK, NJ.

For ELIZABETH MAAG, (Civil 04-3101), Plaintiff: ELLEN RELKIN, WEITZ & LUXENBERG, CHERRY HILL, NJ.

For M. TIMOTHY EVERS, (Civil 04-3228), DELANCY

NEWSOM, (Civil 04-3229), GARY E. COOPER, (Civil 04-3230), LETICIA CORTEZ, (Civil 04-3231), Plaintiffs: D. JOHN NEESE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WILLIAMS & BAILEY LAW FIRM, HOUSTON, TX.

For DENNIS DYE, (Civil 04-3260), Plaintiff: DANIEL G. KEATING, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, KEATING, KEATING & KUZMAN, ESQS., WARREN, OH; TRENT MIRACLE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, THE SIMMONS FIRM, LLC, EAST ALTON, IL.

For DONNA POPE, (Civil 04-3304), [*12] Plaintiff: LOUISE A. LOCK, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BALTIMORE, MD.

For ANGELA BENNETT, (Civil 04-684), Plaintiff: JANET G. ABARAY, COUNSEL NOT ADMITTED TO USDC-NJ BAR, LOPEZ, HODES, RESTAINO, MILMAN & SIKOS, LC, CINCINNATI, OH; NANCY A. WASHINGTON, SAIBER, SCHLESINGER, SATZ, & GOLDSTEIN, LLC, NEWARK, NJ.

RICHARD GREGORY, (Civil 04-823), Plaintiff, Pro se.

For RICHARD GREGORY, (Civil 04-823), Plaintiff: DAVID F. MICELI, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, PC, MONTGOMERY, AL.

For MARY TIMBLIN, (Civil 04-1084), RICHARD RUDIS, (Civil 04-1083), M. CATHERINE RUDIS, (Civil 04-1083), KEN CLIFTON, (Civil 04-819), KRISTEN FULCHER, (Civil 04-819), ROBERT SHACKFORD, (Civil 04-4667), Plaintiffs: CHRISTOPHER E. GRELL, COUNSEL NOT ADMITTED TO USDC-NJ BAR, OAKLAND, CA.

For AILEEN BARRETTI, (Civil 04-3264), MICHAEL BARRETTI, (Civil 04-3264), Plaintiffs: ROBERT E. MURDOCK, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MURDOCK & ASSOCIATES, CHARTERED, LAS VEGAS, NV.

For NICHOLAS SEXTON, (Civil 04-3265), BRITTANY BAKER, (Civil 04-4116), SALLY BLINN, as Personal Representative of the Estate of John Angelos, Deceased (Civil [*13] 04-5581), Plaintiffs: TOBIAS L. MILLROOD, SCHIFFRING & BARROWAY, LLP,

BALA CYNWYD, PA.

For JOSEPH LOISEAU, (Civil 04-3645), ARLENE LOISEAU, (Civil 04-3645), ERNEST ANDERSON, (Civil 04-3646), CHARLENE COOLEY, (Civil 04-3760), LINDA HOLTON, (Civil 04-3761), HARLAN HOLTON, (Civil 04-3761), BONNIE ANDERSON, (Civil 04-3646), Plaintiffs: BRIAN ALAN PRIM, COUNSEL NOT ADMITTED TO USDC-NJ BAR, GOLDBERG, PERSKY, WHITE, & HOSTLER, HUNTINGTON, WV.

For ANNETTE AMEZCUA, (Civil 04-683), Plaintiff: TAB MITCHELL, COUNSEL NOT ADMITTED TO USDC-NJ BAR, THE MITCHELL LAW FIRM, HOLLISTER, CA.

For MARCIA BUNTING, (Civil 04-4008), MICHELLE HAGY, (Civil 04-4009), MELINDA HEARD, (Civil 04-4010), DEBORAH JOHNSON, (Civil 04-4012), ALISHA WILSON, (Civil 04-4015), Plaintiffs: DAVID H. BERG, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BERG & ANDROPHY, ESQS., HOUSTON, TX; TAMERA L. VENZKE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, THE VENZKE LAW FIRM, LLP, HOUSTON, TX.

For TRACY HOLT, (Civil 04-4011), BRANDI KAY, (Civil 04-4013), KENNETH WATKINS, (Civil 04-4014), Plaintiffs: DAVID H. BERG, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BERG & ANDROPHY, ESQS., HOUSTON, TX.

For JEROD STEPHENS, (Civil 04-3300), Plaintiff: [*14] SCOTT R. HALL, COUNSEL NOT ADMITTED TO USDC-NJ BAR, ATKINSON HASKINS NELLIS HOLEMAN BRITTINGHAM GLADD & CARWILE, TULSA, OK.

For RONNIE WILKINS, (Civil 04-3301), LAURIE WILKINS, (Civil 04-3301), Plaintiffs: ROBERT G. RIKARD, COUNSEL NOT ADMITTED TO USDC-NJ BAR, JAMES C. ANDERS, PA & ASSOCIATES, COLUMBIA, SC.

For MATTHEW PHILLIPS, (Civil 04-3302), Plaintiff: THOMAS J. MOVERMAN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, LIPSIG, SHAPEY, MANUS & MOVERMAN, PC, NEW YORK, NY.

For CATHERINE PENN, (Civil 04-3303), Plaintiff:

NICOLE V. GURKIN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, NAPOLI, KAISER & BERN, LLP, NEW YORK, NY.

For JOSEPH CONOVER, (Civil 04-4119), Plaintiff: KENNETH S. SAFFREN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, SAFFREN & WEINBERG, ESQS., ROCKLEDGE, PA.

For JOYCE CONOVER, (Civil 04-4119), Plaintiff: KENNETH S. SAFFREN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, SAFFREN & WEINBERG, ESQS., ROCKLEDGE, PA. NANCY A. WASHINGTON, SAIBER, SCHLESINGER, SATZ, & GOLDSTEIN, LLC, NEWARK, NJ.

For GEORGE JUST, (Civil 04-4603 & Civil 04-5579) also known as GEORGE MITCHELL JUST, PATRICIA J. JUST, (Civil 04-4603 & Civil 04-5579), Plaintiffs: CINDY STINE, COUNSEL NOT ADMITTED TO USDC-NJ [*15] BAR, GOLDBERG, PERSKY & WHITE, PC, PITTSBURGH, PA.

WILLIAM WOOD, (Civil 04-4618), Plaintiff, Pro se.

DIANE M. PITTS, (Civil 04-4650), Plaintiff, Pro se.

THOMAS LOFTON, (Civil 04-4654), Plaintiff, Pro se.

For MARTHA LOPEZ, (Civil 04-4692), Plaintiff: FREDERICK E. GERSON, D'ALESSANDRO, JACOVINO & GERSON, ESQS., FLORHAM PARK, NJ.

For DIANA GRIGSBY, (Civil 04-4733), MARILYN BRINKLEY, (Civil 04-4734), Plaintiffs: LISA J. RODRIGUEZ, TRUJILLO RODRIGUEZ & RICHARDS, LLP, HADDONFIELD, NJ.

For ERNEST BECHLER, (Civil 04-4821), PATRICIA BECHLER, (Civil 04-4821), MICHAEL BECHLER, (Civil 04-4821), Plaintiffs: NANCY ISAACSON, GOLDSTEIN LEM & ISAACSON, PC, SPRINGFIELD, NJ.

For PATRICIA HOLLERBACH, (Civil 04-4117), WILLIAM HOLLERBACH, (Civil 04-4117), Plaintiffs: JENA BORDEN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, SIMMONS COOPER, LLC, EAST ALTON, IL.

For DARREN CRAWFORD, (Civil 04-3591), Plaintiff:

BRETT S. MARKSON, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MARKSON, PICO & HUFF, LLP, LOS ANGELES, CA.

SHELLI BELANGER, (Civil 04-3258), Plaintiff, Pro se.

For SHELLI BELANGER, (Civil 04-3258), MICHAEL BELANGER, (Civil 04-3258), NATHAN BOZEAT, (Civil 04-3259), Plaintiffs: [*16] J. STEWART WHITE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WHITE, MEANY & WETHERALL, LLP, RENO, NV.

MICHAEL BELANGER, (Civil 04-3258), Plaintiff, Pro se.

NATHAN BOZEAT, (Civil 04-3259), Plaintiff, Pro se.

For YVETTE BROWN, (CIVIL 05-1149), Plaintiff: RONALD S. GOLDSER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, ZIMMERMAN REED, MINNEAPOLIS, MN.

For CONNIE CAMACHO, (Civil 04-5582), Plaintiff: JAMES P. FRANTZ, COUNSEL NOT ADMITTED TO USBC-NJ BAR, FRANTZ, TOWNSEND & FOLDENAUER, ESQS., SAN DIEGO, CA.

For JOHN E.D. GRUNOW, JR., (Civil 05-3845), Plaintiff: ANDREW CAREY BARNARD, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MIAMI, FL.

For JUDITH CAMPBELL, (Civil 04-688), Plaintiff: MICHAEL L. SKINNER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, THORNE, SKINNER & THORNE, ESQS., GRAND PRAIRIE, TX.

For JOSEPH LEE GRIFFIN, (Civil 04-4118), Plaintiff: STEPHEN MEYERKORD, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MEYERKORD, RINEBERG & GRAHAM, LLC, ST. LOUIS, MO.

For WESLEY D. VANLANDINGHAM, (Civil 05-4970), Plaintiff: MICHAEL W. BOYD, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BAIM, GUNTI, MOUSER, HAVNER, BOYD & WORSHAM, PLC, PINE BLUFF, AR, US.

For NUTRAQUEST, INC., Petitioner: SIMON KIMMELMAN, [*17] ANDREA DOBIN, VALERIE A. HAMILTON, STERNS & WEINROTH, PC, TRENTON, NJ.

For CYTODYNE TECHNOLOGIES, INC., Defendant: BRIAN M. GAYNOR, CATALINA & ASSOCIATES, SHREWBURY, NJ; CAROL D. WILLIAMSON, COUNSEL NOT ADMITTED TO USDC-NJ BAR, STRASBURGER & PRICE, ESQS., DALLAS, TX; CHAD A. READLER, COUNSEL NOT ADMITTED TO USBC-NJ BAR, JONES, DAY, REAVIS & POGUE, ESQS., COLUMBUS, OH; DEBRA W. BIEHLE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, STRASBURGER & PRICE, LLP, HOUSTON, TX; ERIC P. BLAHA, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOFFINGER, STERN & ROSS, ESQS., NEW YORK, NY; HAROLD W. MCLEARY, JR., COUNSEL NOT ADMITTED TO USDC-NJ BAR, MEMPHIS, TN; J. ALLEN SYDNOR, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HUIE, FERNAMBUCQ & STEWART, LLP, BIRMINGHAM, AL; JAMES MILLER KAPLAN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WILSON ELSEER MOSKOWITZ EDLEMAN & DICKER, ESQS., MIAMI, FL; JAY H. GELLER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, SANTA MONICA, CA; JOSEPH M. O'NEILL, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MARKS, O'NEILL, O'BRIEN, & COURTNEY, PC, DOYLESTOWN, PA; LOUIS A. BOVE, BODELL, BOVE, GRACE & VAN HORN, PC, PHILADELPHIA, PA; MARIE LEFERE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOLLAND & KNIGHT, ESQS., FORT LAUDERDALE, [*18] FL; MARK F. HAZELWOOD, COUNSEL NOT ADMITTED TO USDC-NJ BAR, LOW, BALL & LYNCH, ESQS., SAN FRANCISCO, CA; MARK HERRMANN, COUNSEL NOT ADMITTED TO USBC-NJ BAR, JONES, DAY, REAVIS & POGUE, ESQS., CLEVELAND, OH; MICHAEL RYAN BARRETT, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BARRETT & WEBER, ESQS., CINCINNATI, OH; MICHAEL A. PINTAR, COUNSEL NOT ADMITTED TO USDC-NJ BAR, ALLISON, MACKENZIE, HARTMAN, SOUMBENIOTIS & RUSSELL, LTD., CARSON CITY, NV; PATRICK J. CAREW, COUNSEL NOT ADMITTED TO USDC-NJ BAR, JONES DAY, DALLAS, TX; RACHELLE H. GLAZER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, DALLAS, TX; ROBERT A. MAGNANINI, BOIES, SCHILLER & FLEXNER, LLP, SHORT HILLS, NJ; SHANE H. FREEDMAN, LATHAM & WATKINS, NEWARK, NJ; VIVIAN H. FAZIO, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BILLING, COCHRAN, HEATH,

LYLES, & MAURO, P.A., FORT LAUDERDALE, FL.

For GENERAL NUTRITION CORPORATION, Defendant: ALLEN M. LOPUS, COUNSEL NOT ADMITTED TO USDC-NJ BAR, PITTSBURGH, PA; DEBRA W. BIEHLE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, STRASBURGER & PRICE, LLP, HOUSTON, TX; DENISE M. SMITH, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, ULMER & BERNE, LLP, CINCINNATI, OH; GAYLE L. BALLEW, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, BROWN, MCCARROLL, [*19] ESQS., DALLAS, TX; JAY H. GELLER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, SANTA MONICA, CA; JOEL M. DONER, WILBRAHAM, LAWLER & BUBA, PC, HADDONFIELD, NJ; MARK F. HAZELWOOD, COUNSEL NOT ADMITTED TO USDC-NJ BAR, LOW, BALL & LYNCH, ESQS., SAN FRANCISCO, CA; SCOTT A. DISALVO, COUNSEL NOT ADMITTED TO USDC-NJ BAR, FAZIO, DAWSON, DISALVO, CANNON, LEVINE, ABERS, FORT LAUDERDALE, FL; SUNAH PARK, THORP, REED & ARMSTRONG, LLP, PHILADELPHIA, PA; VIVIAN H. FAZIO, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BILLING, COCHRAN, HEATH, LYLES, & MAURO, P.A., FORT LAUDERDALE, FL; IRA M. LEVEE, LOWENSTEIN SANDLER PC, ROSELAND, NJ.

For ROBERT CHINERY, JR., (CIVIL 04-690), Defendant: BRIAN J. MCMAHON, GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE, PC, NEWARK, NJ; ERIC P. BLAHA, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOFFINGER, STERN & ROSS, ESQS., NEW YORK, NY; GUY V. AMORESANO, GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE, PC, NEWARK, NJ; MICHAEL G. BERRY, COUNSEL NOT ADMITTED TO USDC-NJ BAR, JEFFERSON CITY, MO; MARIE LEFERE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, FORT LAUDERDALE, FL.

For PHOENIX LABORATORIES, INC., (CIVIL 04-690), Defendant: BRUCE AINBINDER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WILSON, [*20] ELSEER, MOSKOWITZ, EDELMAN & DICKER, LLP, NEW YORK, NY; CAROLINE E. DIWIK, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WILSON, ELSEER, MOSKOWITZ, EDELMAN & DICKER, LLP, SAN FRANCISCO, CA; ERIC P. BLAHA, COUNSEL

NOT ADMITTED TO USDC-NJ BAR, HOFFINGER, STERN & ROSS, ESQS., NEW YORK, NY; J. KEVIN KINDRED, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WILSON, ELSEY, MOSKOWITZ, EDELMAN & DICKER, LLP, DALLAS, TX; JACK T. RILEY, COUNSEL NOT ADMITTED TO USDC-NJ BAR, JOHNSON & BELL, LTD., CHICAGO, IL; JAMES MILLER KAPLAN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WILSON ELSEY MOSKOWITZ EDELMAN & DICKER, ESQS., MIAMI, FL; JAMES A. PATTON, JR., COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, MILLER, HAMILTON, SNIDER & ODOM, LLC, BIRMINGHAM, AL; JOHN P. NULTY, JR., CAMMARATA, NULTY & GARRIGAN, ESQS., JERSEY CITY, NJ; JOSEPH GOLDBERG, COUNSEL NOT ADMITTED TO USDC-NJ BAR, LAS VEGAS, NV; LOUIS A. BOVE, BODELL, BOVE, GRACE & VAN HORN, PC, PHILADELPHIA, PA; MARIE LEFERE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOLLAND & KNIGHT, ESQS., FORT LAUDERDALE, FL; MICHAEL RYAN BARRETT, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BARRETT & WEBER, ESQS., CINCINNATI, OH; MICHAEL G. BERRY, COUNSEL NOT ADMITTED TO USDC-NJ BAR, JEFFERSON CITY, MO; RICHARD [*21] A. CATALINA, JR., CATALINA & ASSOCIATES, PC, SHREWSBURY, NJ; RICHARD E. MORTON, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BORTON, PETRINI & CONRON, LLP, SAN FRANCISCO, CA; SALVATORE A. CLEMENTE, WILSON, ELSEY, MOSKOWITZ, EDELMAN & DICKER, LLP, INDEPENDENCE SQUARE WEST PHILADELPHIA, PA; MEGAN K. MCKEEVER, CAMMARATA, NULTY & GARRIGAN, LLC, JERSEY CITY, NJ.

For METABOLIFE INTERNATIONAL, INC., (CIVIL 04-691), Defendant: BAXTER W. BANOWSKY, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, BANOWSKY, BETZ & LEVINE, ESQS., DALLAS, TX; JAMES W. OZOG, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WIEDNER & MCAULIFFE, LTD., CHICAGO, IL; KENNETH R. MEYER, PORZIO, BROMBERG & NEWMAN, PC, MORRISTOWN, NJ.

For CHEMINS COMPANY, INC., (CIVIL 04-691), Defendant: MARK R. PHARR, III, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, GALLOWAY, JOHNSON, TOMPKIND, BURR & SMITH, ESQS.,

LAFAYETTE, LA.

For N.V.E., INC., (CIVIL 04-691), Defendant: H. DANIEL SPAIN, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, SPAIN & HASTINGS, ESQS., HOUSTON, TX; ELLEN W. SMITH, PASHMAN STEIN, PC, HACKENSACK, NJ. DENISE M. SMITH, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, ULMER & BERNE, LLP, CINCINNATI, OH; GAYLE L. BALLEW, COUNSEL NOT ADMITTED TO THE [*22] USDC-NJ BAR, BROWN, MCCARROLL, ESQS., DALLAS, TX.

For MUSCLE-TECH, INC., (CIVIL 04-691), Defendant: DANIEL J. HERLING, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, SAN FRANCISCO, CA; DWAYNE J. HERMES, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, HERMES, SARGENT & BATES, LLP, DALLAS, TX; JOSEPH H. LEMKIN, DUANE MORRIS LLP, NEWARK, NJ; RICHARD A. SHEEHY, COUNSEL NOT ADMITTED TO USDC-NJ BAR, SHEEHY, SERPE & WARE, ESQS., HOUSTON, TX.

For WALGREEN CO., (CIVIL 04-691), Defendant: BAXTER W. BANOWSKY, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, BANOWSKY, BETZ & LEVINE, ESQS., DALLAS, TX; CARL J. SCHAEFER, LESTER SCHWAB KATZ & DWYER, MILLBURN, NJ; DANIEL J. MADDEN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, DAVID, GOODMAN & MADOLE, PC, DALLAS, TX; DARRELL L. BARGER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HARTLINE, DACUS, BARGER, DREGER & KERN, LLP, CORPUS CHRISTI, TX; LAWRENCE D. SMITH, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WALTON, LANTAFF, SCHROEDER & CARSON, ESQS., MIAMI, FL.

For ECKERD CORPORATION, (CIVIL 04-691), Defendant: BAXTER W. BANOWSKY, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, BANOWSKY, BETZ & LEVINE, ESQS., DALLAS, TX; DANIEL JOHN MCCARTHY, DAVID S. COHEN, MINTZER, SAROWITZ, ZERIS, LEDVA [*23] & MEYERS, LLP, CHERRY HILL, NJ.

For WAL-MART STORES TEXAS L.P., (CIVIL 04-827), Defendant: DENISE M. SMITH, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, ULMER & BERNE, LLP, CINCINNATI, OH; GARY E.

RAMIREZ, COUNSEL NOT ADMITTED TO USDC-NJ BAR, CHAVES, GONZALES & HOBLIT, LLP, CORPUS CHRISTI, TX; RAMONA MARTINEZ, COUNSEL NOT ADMITTED TO USDC-NJ BAR, COWLES & THOMPSON, PC, DALLAS, TX; RICHARD DAVID MILLET, RICHARD D. MILLET & ASSOCIATES, LLC, SOMERVILLE, NJ; VAUGHAN E. WATERS, COUNSEL NOT ADMITTED TO USDC-NJ BAR, CORPUS CHRISTI, TX.

For FRAN'S HEALTH NATURAL FOODS, (CIVIL 04-827), Defendant: CLAYTON E. DEVIN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MCCAULEY, MACDONALD & DEVIN, PC, DALLAS, TX.

For EVERGOOD PRODUCTS CORPORATION, (CIVIL 04-1130), Defendant: CAROLINE E. DIWIK, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER, LLP, SAN FRANCISCO, CA; JAMES MILLER KAPLAN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WILSON ELSE MOSKOWITZ EDELMAN & DICKER, ESQS., MIAMI, FL; JOHN P. NULTY, JR., CAMMARATA, NULTY & GARRIGAN, ESQS., JERSEY CITY, NJ; RICHARD E. MORTON, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BORTON, PETRINI & CONRON, LLP, SAN FRANCISCO, CA; MEGAN K. MCKEEVER, [*24] CAMMARATA, NULTY & GARRIGAN, LLC, JERSEY CITY, NJ; BRUCE AINBINDER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, NEW YORK, NY; ERIC P. BLAHA, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOFFINGER, STERN & ROSS, ESQS., NEW YORK, NY.

For CYTODYNE, LLC, (CIVIL 04-1130), formerly known as EVERRICH, LLC, Defendant: JAMES MILLER KAPLAN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WILSON ELSE MOSKOWITZ EDELMAN & DICKER, ESQS., MIAMI, FL; JOHN P. NULTY, JR., CAMMARATA, NULTY & GARRIGAN, ESQS., JERSEY CITY, NJ; MICHAEL RYAN BARRETT, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BARRETT & WEBER, ESQS., CINCINNATI, OH; RICHARD A. CATALINA, JR., CATALINA & ASSOCIATES, PC, SHREWSBURY, NJ; MEGAN K. MCKEEVER, CAMMARATA, NULTY & GARRIGAN, LLC, JERSEY CITY, NJ; ERIC P. BLAHA, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOFFINGER, STERN & ROSS,

ESQS., NEW YORK, NY.

For CYTODYNE I, LLC, (CIVIL 04-1130), formerly known as EVERMEL, LLC, Defendant: JOHN P. NULTY, JR., CAMMARATA, NULTY & GARRIGAN, ESQS., JERSEY CITY, NJ; MICHAEL RYAN BARRETT, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BARRETT & WEBER, ESQS., CINCINNATI, OH; MEGAN K. MCKEEVER, CAMMARATA, NULTY & GARRIGAN, LLC, JERSEY CITY, NJ; ERIC P. BLAHA, COUNSEL NOT ADMITTED TO USDC-NJ [*25] BAR, HOFFINGER, STERN & ROSS, ESQS., NEW YORK, NY; JAMES MILLER KAPLAN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MIAMI, FL.

For MEL RICH, (CIVIL 04-1130), Defendant: JAMES MILLER KAPLAN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MIAMI, FL; JOHN P. NULTY, JR., CAMMARATA, NULTY & GARRIGAN, ESQS., JERSEY CITY, NJ; RICHARD A. CATALINA, JR., CATALINA & ASSOCIATES, PC, SHREWSBURY, NJ; ERIC P. BLAHA, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOFFINGER, STERN & ROSS, ESQS., NEW YORK, NY.

For STEVEN STERN, (CIVIL 04-1130), Defendant: JAMES MILLER KAPLAN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MIAMI, FL; JOHN P. NULTY, JR., CAMMARATA, NULTY & GARRIGAN, ESQS., JERSEY CITY, NJ; ERIC P. BLAHA, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOFFINGER, STERN & ROSS, ESQS., NEW YORK, NY.

For RTC RESEARCH & DEVELOPMENT, LLC, (CIVIL 04-1130), Defendant: GUY V. AMORESANO, GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE, PC, NEWARK, NJ; MARIE LEFERE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOLLAND & KNIGHT, ESQS., FORT LAUDERDALE, FL.

For GENERAL NUTRITION COMPANIES, INC., (CIVIL 04-1130), Defendant: FELIX JOHN GORA, COUNSEL NOT ADMITTED TO USBC-NJ BAR, RENDIGS, FRY, KIELY & DENNIS, LLP, CINCINNATI, OH; H. E. [*26] NIX, JR., COUNSEL NOT ADMITTED TO USDC-NJ BAR, NIX, HOLTSFORD, GILLIAND, HIGGINS & HITSON, PC, MONTGOMERY, AL; JOEL M. DONER,

WILBRAHAM, LAWLER & BUBA, PC, HADDONFIELD, NJ; MICHAEL RYAN BARRETT, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BARRETT & WEBER, ESQS., CINCINNATI, OH; MICHAEL J. VASSALOTTI, BROWN & CONNERY, LLP, WESTMONT, NJ; PAUL KISSEL, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BORTON, PETRINI & CONRON, LLP, SAN DIEGO, CA; DENISE M. SMITH, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, ULMER & BERNE, LLP, CINCINNATI, OH.

For TARGET CORPORATION, Defendant: ERIC P. BLAHA, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOFFINGER, STERN & ROSS, ESQS., NEW YORK, NY; RACHELLE H. GLAZER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, DALLAS, TX; SCOTT A. DISALVO, COUNSEL NOT ADMITTED TO USDC-NJ BAR, FAZIO, DAWSON, DISALVO, CANNON, LEVINE, ABERS, FORT LAUDERDALE, FL; THOMAS JEFFREY PASUIT, CONNELL FOLEY LLP, ROSELAND, NJ.

For GNC FRANCHISING INC, (CIVIL 04-692, Civil 04-3258 & Civil 04-3259), Defendant: CHARLES W. SPANN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, PERRY & SPANN, PC, RENO, NV; EUGENIA S. CHERN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, FLEMING & PHILLIPS, LLP, WALNUT CREEK, CA; FELIX JOHN GORA, COUNSEL [*27] NOT ADMITTED TO USBC-NJ BAR, RENDIGS, FRY, KIELY & DENNIS, LLP, CINCINNATI, OH.

For NORTHWESTERN UNIVERSITY, (CIVIL 04-1275), Defendant: COLIN R. ROBINSON, SAIBER SCHLESINGER SATZ & GOLDSTEIN, LLC, NEWARK, NJ; WHITNEY R. CHELNIK, SALBER SCHLESINGER SATZ & GOLDSTEIN, NEWARK, NJ.

For NEXT PROTEINS, INC., (CIVIL 04-1275) formerly known as NEXT NUTRITION, INC. doing business as NEXT PROTEINS INTERNATIONAL, Defendant: MARY O'KEEFE MASSEY, HANLON BOGLIOLI & HANLON, LLP, EDISON, NJ.

For GENERAL NUTRITION CENTER, (Civil 04-1603 & Civil 04-1940), Defendant: ERIC P. BLAHA, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOFFINGER, STERN & ROSS, ESQS., NEW YORK, NY; HAROLD W. MCLEARY, JR., COUNSEL NOT

ADMITTED TO USDC-NJ BAR, MEMPHIS, TN; JOHN P. NULTY, JR., CAMMARATA, NULTY & GARRIGAN, ESQS., JERSEY CITY, NJ; MICHAEL J. GROSSANO, BOFFA, SHALJIAN, CAMMARATA, NULTY & GARRIGAN, L.L.C., JERSEY CITY, NJ.

For NUTRAQUEST, INC., formerly known as CYTODYNE TECHNOLOGIES, INC., Defendant: DEBRA W. BIEHLE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, STRASBURGER & PRICE, LLP, HOUSTON, TX; DIANE P. SULLIVAN, DECHERT LLP, PRINCETON PIKE CORPORATE CENTER, PRINCETON, NJ; JOHN P. MANARD, JR., COUNSEL NOT ADMITTED [*28] TO USDC-NJ BAR, NEW ORLEANS, LA; LORI J. LAMOREAUX, COUNSEL NOT ADMITTED TO USDC-NJ BAR, DALLAS, TX; MICHAEL RYAN BARRETT, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BARRETT & WEBER, ESQS., CINCINNATI, OH; THOMAS M. LOUIS, WELLS MARBLE & HURST, PLLC, JACKSON, MS; JEFFREY S. POSTA, STERNS & WEINROTH, PC, TRENTON, NJ; THOMAS KANE, MICHELLE HART YEARY, DECHERT LLP, PRINCETON, NJ; SIMON KIMMELMAN, STERNS & WEINROTH, PC, TRENTON, NJ.

For CYTODYNE INTERNATIONAL, LLC, formerly known as CYTODYNE TECHNOLOGIES, INC., Defendant: MICHAEL RYAN BARRETT, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BARRETT & WEBER, ESQS., CINCINNATI, OH; VIVIAN H. FAZIO, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BILLING, COCHRAN, HEATH, LYLES, & MAURO, P.A., FORT LAUDERDALE, FL.

For MUSCLETECH, INC., (CIVIL 04-818), Defendant: ERIC ARTHUR WEISS, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, PC, WOODLAND FALLS CORPORATE PARK, CHERRY HILL, NJ.

For WEIDER NUTRITION INTERNATIONAL, INC., (CIVIL 04-818), Defendant: ANDREW J. GIBBS, COZEN O'CONNOR, NEWARK, NJ; CHARLES G. KING, COUNSEL NOT ADMITTED TO USDC-NJ BAR, KING & PENNINGTON, LLP, HOUSTON, TX; R. STEVEN PORRECA, JR., KELLEY, JASONS, MCGUIRE & SPINELLI, LLP, PHILADELPHIA, [*29] PA.

For ATF FITNESS PRODUCTS, (CIVIL 04-818), Defendant: DOUGLAS E. ARPERT, NORTON,

ARPERT, SHEEHY & HIGGINS, P.C., WEST PATERSON, NJ.

For RONK ENTERPRISES, LLC, (CIVIL 04-1083), Defendant: WALTER JOSEPH KLEKOTKA, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, PC, WOODLAND FALLS CORPORATE PARK, CHERRY HILL, NJ.

For KEVIN MIEHLE, (CIVIL 04-1083) doing business as MAX MUSCLE OF CITRUS HEIGHTS, Defendant: GARY K. FELDBAUM, THE CORPORATE CENTER AT SAGEMORE, MARLTON, NJ.

For NATURE'S PANTRY, INC., (CIVIL 04-685), MASTERSON HEALTH FOOD INCORPORATED, (CIVIL 04-685), Defendants: BETH S. SWARTZ, CALLAN, KOSTER, BRADY & BRENNAN, LLP, SHREWSBURY, NJ.

For PROSOURCE NUTRITIONAL SYSTEMS, INC., (CIVIL 04-384), PROSOURCE PERFORMANCE PRODUCTS, (CIVIL 04-384), KELLY CONKLIN, (CIVIL 04-384), Defendants: GUY V. AMORESANO, GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE, PC, NEWARK, NJ.

For TIM ZIEGENFUSS, (CIVIL 04-384), Defendant: RICHARD A. CATALINA, JR., CATALINA & ASSOCIATES, PC, SHREWSBURY, NJ.

For FARM TO MARKET, INC., (CIVIL 04-824), Defendant: DANIEL R. WATKINS, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WATKINS & CASAUDOUMECQ, LLP, COSTA MESA, CA.

For D.P.S. NUTRITION, [*30] INC., (CIVIL 04-3021), Defendant: LAWRENCE J. BUNIS, MARGOLIS EDELSTEIN, ESQS., WESTMONT, NJ.

For STAN'S HEALTH FOODS, (CIVIL 04-3021), RICHARD STANIEC, (CIVIL 04-3021), JULIAN STANIEC, (CIVIL 04-3021), Defendants: JEFFREY H. QUINN, DICKIE, MC CAMEY & CHILCOTE, PC, PHILADELPHIA, PA.

For WYETH-AYERST PHARMACEUTICALS, INC., (Civil 04-3059), WYETH-AYERST LABORATORIES, (Civil 04-3059), Defendants: REETU DANDORA, REED SMITH, PHILADELPHIA, PA.

For CHATTEM, INC, (Civil 04-3059), Defendant:

GERALD J. VALENTINI, COUNSEL NOT ADMITTED TO USDC-NJ BAR, DEASEY, MAHONEY & BENDER, LTD., PHILADELPHIA, PA.

For THOMPSON MEDICAL CO., INC., (Civil 04-3059), Defendant: LOUIS A. BOVE, BODELL, BOVE, GRACE & VAN HORN, PC, PHILADELPHIA, PA.

For RITE AID CORP., (Civil 04-3059), Defendant: ERIC ARTHUR WEISS, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, PC, WOODLAND FALLS CORPORATE PARK, CHERRY HILL, NJ; HOWARD J. KAUFMAN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, KAUFMAN, COREN & RESS, PC, PHILADELPHIA, PA; LAURIANNE FALCONE, MARSHALL, DENNEHEY, WARNER, COLEMAN, & GOGGIN, PHILADELPHIA, PA; MADELINE S. BAIO, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, PC, PHILADELPHIA, PA.

For CVS PHARMACY, [*31] INC., (Civil 04-3059), Defendant: ROBERT N. SPINELLI, COUNSEL NOT ADMITTED TO USDC-NJ BAR, KELLEY, JASONS, MCGUIRE & SPINELLI, LLP, PHILADELPHIA, PA.

For SIMON PROPERTY GROUP (TEXAS) L.P., (Civil 04-682), Defendant: MITCHELL C. CHANEY, COUNSEL NOT ADMITTED TO USDC-NJ BAR, RODRIGUEZ, COLVIN, CHANEY & SAENZ, LLP, BROWNSVILLE, TX.

For WAL-MART STORES, INC., (Civil 04-3108), Defendant: JOHN RAMIREZ, COUNSEL NOT ADMITTED TO USDC-NJ BAR, BUSH & RAMIREZ, PC, HOUSTON, TX; MICHAEL W. BREWER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HILTGEN & BREWER, PC, OKLAHOMA CITY, OK; RICHARD DAVID MILLET, RICHARD D. MILLET & ASSOCIATES, LLC, SOMERVILLE, NJ.

For GN OLDSCO CORPORATION, (Civil 04-3113) formerly known as GENERAL NUTRITION CORPORATION, TL ADMINISTRATION, INC., (Civil 04-3230) formerly known as TWIN LABORATORIES, INC., Defendants: JULIE C. SMITH, ULMER & BERNE LLP, CINCINNATI, OH.

For VITAMIN SHOPPE INDUSTRIES INC, (Civil 04-2018), Defendant: COLLEEN M. READY,

MARGOLIS EDELSTEIN, WESTMONT, NJ; JENNIFER SNYDER HEIS and JENNIFER BOUCHARD HAGEMAN, NEITHER COUNSEL IS ADMITTED TO USDC-NJ BAR, ULMER & BERNE, LLP, CINCINNATI, OH; MICHAEL P. ZIPFEL, RAWLE & HENDERSON, LLP, PHILADELPHIA, [*32] PA; DAVID J. COONER, MCCARTER & ENGLISH, LLP, NEWARK, NJ.

For APOLLO MANAGEMENT, L.P., (Civil 04-3260 & Civil 04-3304), Defendant: DENISE M. SMITH, COUNSEL NOT ADMITTED TO THE USDC-NJ BAR, ULMER & BERNE, LLP, CINCINNATI, OH.

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For DR. MARK GARDNER, (Civil 04-1275), Defendant: DOMINICK W. SAVAIAO, COUNSEL NOT ADMITTED TO USDC-NJ BAR, CLAUSEN MILLER, PC, CHICAGO, IL.

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For NUTRITION DISCOUNTERS, INC., (Civil 04-3261), Defendant: JANET LYNN POLETO, HARDIN, KUNDLA, MCKEON, POLETO & POLIFRONI, PC, SPRINGFIELD, NJ; MARK C. FEDOTA, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WILLIAMS, MONTGOMRY & JOHN, LTD, CHICAGO, IL.

For MUCH MORE THAN VITAMINS, INC., (Civil 04-3258 & Civil 04-3259) doing business as GNC/GENERAL NUTRITION CENTER, Defendant: CHARLES W. SPANN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, PERRY & SPANN, PC, RENO, NV.

For JOE WELLS ENTERPRISES, INC., (CIVIL 04-1083), Defendant: GLENN ALAN MONTGOMERY, POLLOCK MONTGOMERY & CHAPIN, PC, BEDMINSTER, NJ; SHEILA F. GONZALEZ, COUNSEL NOT ADMITTED TO USDC-NJ BAR, LAW OFFICES OF DONALD J. DESHAW,

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For TROY COKER ENTERPRISES, (Civil 04-688) doing business as SMOOTHIE KING, RAJENDRA SINGH, (Civil 04-698) doing business as GNC STORE # 3316, Defendants: DEBRA W. BIEHLE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, STRASBURGER & PRICE, LLP, HOUSTON, TX.

For ROBERT CHINERY, JR., (CIVIL 04-1130), ThirdParty Plaintiff: MARIE LEFERE, COUNSEL [*35] NOT ADMITTED TO USDC-NJ BAR, HOLLAND & KNIGHT, ESQS., FORT LAUDERDALE, FL.

For PHOENIX LABORATORIES, INC., (CIVIL 04-1130), ThirdParty Plaintiff: JAMES MILLER KAPLAN, COUNSEL NOT ADMITTED TO USDC-NJ BAR, WILSON ELSEER MOSKOWITZ EDLEMAN & DICKER, ESQS., MIAMI, FL; MARIE LEFERE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOLLAND & KNIGHT, ESQS., FORT LAUDERDALE, FL; ERIC P. BLAHA, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOFFINGER, STERN & ROSS, ESQS., NEW YORK, NY.

For NORTHWESTERN UNIVERSITY, (CIVIL 04-1275), ThirdParty Plaintiff: COLIN R. ROBINSON, SAIBER SCHLESINGER SATZ & GOLDSTEIN, LLC, NEWARK, NJ.

For THE BALTIMORE ORIOLES, INC., (CIVIL 04-1130), THE BALTIMORE ORIOLES LIMITED PARTNERSHIP, (CIVIL 04-1130), ThirdParty Defendants: PETER MURPHY, COUNSEL NOT ADMITTED TO USDC-NJ BAR, KUBICKI DRAPER, ESQS., MIAMI, FL.

For NEXT PROTEINS, INC., (CIVIL 04-1275) formerly known as NEXT NUTRITION, INC. doing business as NEXT PROTEINS INTERNATIONAL, ThirdParty Defendant: DAVID J. COONER, MCCARTER & ENGLISH, LLP, NEWARK, NJ; GARY K. MOORE, COUNSEL NOT ADMITTED TO USDC-NJ BAR, MOORE, STRICKLAND & WHITSON-OWEN, ESQS., CHICAGO, IL; JEFFREY SINGER, COUNSEL NOT ADMITTED TO USDC-NJ BAR, SEGAL, [*36] MCCAMBRIDGE, SINGER & MAHONEY, LTD.,

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For PHOENIX LABORATORIES, INC., (CIVIL 04-1275), ThirdParty Defendant: ERIC P. BLAHA, COUNSEL NOT ADMITTED TO USDC-NJ BAR, HOFFINGER, STERN & ROSS, ESQS., NEW YORK, NY.

For NUTRI SPORT, INC., (CIVIL 04-1083), Cross Defendant: CRAIG HOLTZ, COUNSEL NOT ADMITTED TO USDC-NJ BAR, LAW OFFICES OF LYDIA BOUZAGLOUS-NEWCUMB, GLENDALE, CA.

For ERNEST BECHLER, ThirdParty Plaintiff: NANCY ISAACSON, GOLDSTEIN LEM & ISAACSON, PC, SPRINGFIELD, NJ.

JUDGES: GARRETT E. BROWN, JR., U.S.D.J.

OPINION BY: GARRETT E. BROWN, JR.

OPINION

MEMORANDUM OPINION

BROWN, District Judge

This matter comes before the Court upon the application of plaintiffs Linda Will and George Wheeler, pursuant to 28 U.S.C. § 1334, to remand their personal injury action to the Circuit Court of Cook County, Illinois. ¹ This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(5). The Court, having considered the parties' submissions and having decided this matter without oral argument pursuant to *Fed. R. Civ. P. 78*; and for the reasons discussed in this Memorandum [*37] Opinion, will deny plaintiffs' application.

¹ The state court action, commenced in the Circuit Court of Cook County, Illinois is styled, *Will, et al. v. Northwestern University, et al.*, No. 01 L 10149.

I. BACKGROUND

On December 12, 2001, plaintiffs, as independent co-administrators of the Estate of Rashidi Wheeler, filed an Amended Complaint against Northwestern University ("Northwestern") and certain of its agents/employees, alleging negligence in connection with the death of

Rashidi Wheeler during a football practice.

On April 3, 2002, Northwestern filed a third-party complaint against Cytodyne Technologies, Inc. / Nutraquest, Inc. (hereinafter "Nutraquest" or "Debtor"); Next Proteins, Inc. f/k/a Next Nutrition, Inc.; d/b/a Next Proteins International; Ultimate Energy Company, LLC; Phoenix Laboratories, Inc.; and General Nutrition Corporation, d/b/a General Nutrition Companies, Inc., a wholly owned subsidiary of Royal Numico NV (collectively, "Third-Party Defendants").

On July 23, 2003, plaintiffs [*38] amended their complaint to add direct claims against the Third Party Defendants. On October 16, 2003, Nutraquest filed a voluntary petition under Chapter 11 of the Bankruptcy Code in this district. On October 21, 2003, plaintiffs dismissed their claims against Debtor and the other Third-Party Defendants without prejudice.²

2 Under Illinois law, plaintiffs may refile their claim against Nutraquest and the other Third-Party Defendants within one year of the voluntary dismissal. 735 ILCS § 5/13-217.

On December 12, 2003, pursuant to 28 U.S.C. § 157(b)(5), Nutraquest filed its motion to transfer approximately fifty-two personal injury and wrongful death cases pending against it to this Court. This motion was granted and on January 23, 2004, an Order was entered transferring fifty-two actions to this Court. Thereafter, on February 9, 2004, in a tele-conference³ held on the record, this Court allowed plaintiffs leave to file a motion to remand their case; and on February 19, 2004, the [*39] plaintiffs so moved.

3 The tele-conference was held to discuss the status of this particular case and to address a February 3, 2004 Order entered in the state court action by the Honorable Kathy M. Flanagan, severing plaintiffs' original tort action from the third-party action for contribution against the Debtor and other Third-Party Defendants. The February Order was entered after the case had been effectively transferred by this Court.

Plaintiffs contend that their suit should be remanded to the Circuit Court of Cook County, Illinois because it is not "related to" the Debtor's Chapter 11 proceeding within the meaning of 28 U.S.C. § 1334(b). Plaintiffs further contend that this Court must abstain, or in the

alternative, should abstain, pursuant to 28 U.S.C. § 1334(c)(2) and (c)(1), respectively.

II. DISCUSSION

A. Plaintiffs' State Court Action Is "Related to" the Debtor's Bankruptcy Proceeding

District courts have "original but not exclusive jurisdiction [*40] of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). "Related to" jurisdiction over a case arises when "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Pacor v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984), *overruled on other grounds by Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 116 S. Ct. 494, 133 L. Ed. 2d 461 (1995). The key to this test of jurisdiction is conceivability and "certainty, or even likelihood, [of an effect on the estate] is not a requirement." *In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 264 (3d Cir. 1991). To be related, the proceeding does not have to be against the debtor or debtor's property; and "an action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Pacor*, 743 F.2d at 994.

There can be no dispute that plaintiffs' tort action is related to the Debtor's bankruptcy proceeding. [*41] Because the issues of causation and damages will be decided in the tort action, any disposition of these issues will be related to a determination of Debtor's liability and would also bear upon any resultant contribution owed by Debtor. Thus, the outcome of the underlying tort action would have a direct impact on the Debtor's liabilities and the administration of its estate. See *In re Farmland Indus., Inc.*, 296 B.R. 793, 806 (8th Cir. 2003) ("related to" jurisdiction existed where resolution of the dispute between plaintiff and nondebtor would necessarily involve determination of debtor's liability); *In re Celotex Corp.*, 124 F.3d 619, 626-27 (4th Cir. 1997) (holding that contribution claim was "related to" the bankruptcy proceeding); Cf. *In re Dow Corning Corp.*, 86 F.3d 482, 494 (6th Cir. 1996) (finding "related to" jurisdiction in breast implant case where nondebtors had potential third-party contribution and indemnification claims against debtor).

Plaintiffs rely heavily on the *Pacor* case in support of their position. Their reliance is misplaced. First, the *Pacor* Court held that an action between non-debtors was not related [*42] to a bankruptcy case even though the defendant had a potential common law claim for indemnification against a debtor. Additionally, the defendant would have to institute an action to establish its right to indemnification. *Pacor*, 743 F.2d at 995. Here, defendant Northwestern has already instituted its third-party claims against Debtor and the other Third-Party Defendants. Moreover, any contribution owed by Debtor to the defendants will be decided in the personal injury action. *Laue v. Leifheit*, 105 Ill. 2d 191, 473 N.E.2d 939, 941-42, 85 Ill. Dec. 340 (Ill. 1984) (interpreting Illinois Contribution Act and holding that a "when there is a pending action, the contribution claim should be asserted by counterclaim or by third-party claim *in that action*") (citation and quotations omitted; emphasis in original); *Truszewski v. Outboard Motor Marine Corp.*, 685 N.E.2d 992, 997-98 (Ill. App. 1997). Also, the relationship of the parties here as joint tortfeasors is markedly different than that of the parties in *Pacor*, where the defendant was a supplier of the non-party, debtor-manufacturer's product. And as previously noted, pursuant to Illinois law, plaintiffs may be [*43] able to rename Debtor as a defendant in the original tort action. Thus, there is no question as to the relatedness of the personal injury action to the bankruptcy proceeding.

B. Mandatory Abstention Does Not Apply to Plaintiffs' Case

"Non-core proceedings under section 157(b)(2) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(b)(2)." 28 U.S.C. § 157(b)(4). There can be no dispute that personal injury tort or wrongful death claims are not core proceedings under title 28. 28 U.S.C. § 157(b)(2)(O). Courts have held that the mandatory abstention provision does not apply to cases transferred pursuant to 28 U.S.C. § 157(b)(5). *In re Pan Am Corp.*, 950 F.2d 839 (2d Cir. 1991); *In re Twin Labs*, 300 B.R. 836, 841 (S.D.N.Y. 2003) (noting "strong legislative presumption in favor of transfer under § 157(b)(5) . . . [where] federal courts have a 'virtually unflagging obligation . . . to exercise the jurisdiction given them.'" (citation omitted); *In re Hudgins*, 102 B.R. 495, 498 (E.D. Va. 1989). Thus, based upon [*44] the plain language of the relevant statutes, as well as case law construing the same, the Court finds that

the doctrine of mandatory abstention is inapplicable in this case.

C. Permissive Abstention Does Not Apply to Plaintiffs' Case

Section 1334(c)(1) of title 28 provides:

Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

Courts have considered several factors when a party requests permissive abstention:

- 1) the effect on the efficient administration of the estate if it abstains,
- 2) the extent to which state law issues predominate over bankruptcy issues,
- 3) the difficulty or unsettled nature of the relevant state law,
- 4) whether there is an established state court proceeding on the same issues,
- 5) any grounds for federal jurisdiction besides the bankruptcy,
- 6) the degree of relatedness of the main bankruptcy case and the substance rather than the form of an allegedly core proceeding, and
- 7) the likelihood that the bankruptcy proceeding [*45] represents forum-shopping by the petitioner.

Balcor/Morristown Ltd. P'ship v. Vector Whippany Assocs., 181 B.R. 781, 793 (Bankr. D.N.J. 1995) (citing *In re Foster*, 105 B.R. 746, 749-50 (Bankr. M.D.Ga. 1989).

In light of these factors, abstention is not proper here. First, because the Debtor's chapter 11 proceeding is already before the Bankruptcy Court in this district, and because over fifty cases have been ordered to be transferred to this Court, abstention in this singular case would not facilitate the efficient administration of the estate. The centralization of all personal injury and wrongful death claims will assist in "developing a reasonable plan of reorganization" or orderly plan of

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liquidation "and at the same time assure fair and non-preferential resolution of outstanding claims." *See Dow Corning*, 86 F.3d at 496. Next, the Court does not find the factors pertaining to the state law issues or status of the proceeding in state court weigh in favor of abstention. In light of the discrete category of cases carved out for transfer pursuant to 28 U.S.C. § 157(b)(5), the Court is not convinced that [*46] these factors weigh in favor of abstention. *Twin Labs*, 300 B.R. at 841; *In re Pan Am*, 950 F.2d at 846. The nature of the personal injury action does not present any difficult or unsettled state law issues. Moreover, the Court does not find that the state law issues would predominate over the bankruptcy issues given the interrelatedness of the issues of liability and damage and their impact upon the Debtor's bankruptcy proceeding.

The clear authority of this Court to transfer the personal injury and wrongful death actions pursuant to 28 U.S.C. § 157(b)(5) and the relatedness of the tort actions to the bankruptcy proceeding weigh against abstention. Finally, the Court does not find that the Debtor has engaged in forum-shopping the filing of its bankruptcy petition. Thus, considering the various factors as to whether permissive abstention is appropriate, the Court concludes that abstention is not warranted and thus, plaintiffs' application is denied.

III. CONCLUSION

For the foregoing reasons and those previously stated on the record at the January 20, 2004 hearing, plaintiffs' application is denied. An appropriate form [*47] of order is filed herewith.

5 MAR 04

GARRETT E. BROWN, JR., U.S.D.J.

ORDER

This matter having come before the Court upon the application of plaintiffs Linda Will and George Wheeler to remand their personal injury action to the Circuit Court of Cook County, Illinois pursuant to 28 U.S.C. § 1334; and the Court having considered the parties' submissions without oral argument pursuant to *Fed. R. Civ. P.* 78; and for the reasons set forth in the Memorandum Opinion filed herewith and the reasons previously stated on the record at the January 20, 2004 hearing,

IT IS this 5th day of MARCH, 2004

ORDERED that plaintiffs' application is denied.

GARRETT E. BROWN, JR., U.S.D.J.